



State of Tennessee Department of Children's Services

Administrative Policies and Procedures: 14.11

Subject: Child Protective Services Due Process

Supersedes: DCS 14.11, 05/01/01

Local Policy: No

Local Procedures: No

Training Required: No

Approved by:

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Application

To All Department of Children's Services Child Protective Services Case Managers, Team Leaders, Team Coordinators, Regional Administrators, and DCS Legal Counsel Performing Tasks in Child Protective Services.

Authority: TCA 37-1-409; 37-5-106

Policy

When necessary to protect a child, the Department of Children's Services has the authority to notify an employer that one of its employees or volunteers has been identified as the perpetrator in a report that alleged physical, severe or sexual abuse of a child. DCS has the same authority regarding persons who fail to protect a child in severe abuse and sexual abuse situations. Because such a notification could adversely affect that person's employment status or relationship with the agency, DCS must advise the identified perpetrator of its intention to notify the agency of the CPS investigation results and explain due process rights. DCS does not notify employers regarding child neglect cases except where the definition of severe child abuse applies.

This policy also applies to employees or volunteers who have voluntarily or involuntarily terminated their working relationship with the agency or organization prior to the completion of the CPS investigation.

Procedures

A. Notification

1. Due process notification applies to indicated perpetrators, who committed physical, severe, or sexual abuse of a child or who failed to protect a child from severe or sexual abuse, **and**

2. Individuals who have access to children either through employment or volunteer status in a child-serving agency, institution, organization, public or private school, or through self-employment, and DCS seeks to release information to that organization or institution, **or**
3. Individuals who voluntarily or involuntarily terminated their working relationship and has access to children either through a child-serving agency, institution, organization, public or private school, or through self-employment, prior to completion of the CPS investigation.
4. Individuals who are already approved foster or adoptive parents.

B. Releasing information

1. Immediately upon classifying the case as indicated physical, severe or sexual abuse, the CPS case manager and team leader must consider the need to release information about the abuse to the perpetrator's employer or the organization for which the perpetrator volunteers. If the perpetrator has current access to children, then emergency procedures must be followed. **(See section C. Initiating due process in emergency situations.)** If the perpetrator does not currently have access to children, then non-emergency procedures must be followed. **(See section D, Initiating due process in non-emergency situations.)**
2. DCS may initiate due process procedures for the purpose of releasing information for a time period of up to 24 months following the classification. If no due process procedures are initiated during that time period, then no release of information concerning the classification will be made at any time. If, at any time during the 24-month period, DCS learns that the perpetrator has access to children through employment or volunteer status, and information has not been previously released, then emergency due process procedures must be followed.
3. However, if DCS has offered due process and the perpetrator failed to request a hearing, or if the due process procedures resulted in upholding the classification, the 24-month limitation is not applicable and release of information can be made at any time for the purpose of protecting children.

C. Initiating due process in emergency situations**1. Access to child**

Initiate due process if it is necessary to release information in order to protect children and if a perpetrator or person who failed to protect has access to a child because of employment

or volunteer status in one of the following:

- a) Child-serving agency
- b) Institution
- c) Public or private school
- d) Self-employment arrangement
- e) Any other organization (e.g., athletic association, community center, tutoring program, camp program, church-sponsored program, transportation service)

2. Central office notification

Notify the central office CPS program staff and request an emergency file review.

3. Case record

Send the case record and any other information regarding the investigation immediately by express mail to the Director of Child Protective Services. The program staff will promptly review the case to determine if the investigation was properly classified as indicated. Central office CPS staff will notify the county of the review results.

4. Perpetrator notification

- a) If the allegation appears indicated upon review, central office CPS program staff will draft the notification letter that the local case manager will prepare on county letterhead and mail to the perpetrator. The notification letter will inform the perpetrator of the results of the investigation and his/her right to appeal the indicated classification decision.
- b) Send all due process notification letters by certified mail, return receipt requested, and marked "personal and confidential" on the envelope.
- c) DCS must receive a written request for an administrative hearing from the perpetrator within ten (10) working days. If the perpetrator submits a written request for a hearing, the perpetrator's letter must be date stamped with the date the written request was received in the county office. The date of receipt must be stamped immediately on the letter as soon as it is received in the county office.

5. Employer notification

Central office CPS program staff will direct the local case manager to contact the perpetrator's employer as appropriate to explain that an administrative process is underway to determine the disposition of the allegations and program staff will provide a draft notification letter to the case manager for

completion and mailing.

6. Appeal summary

If the perpetrator wishes to appeal the finding, the local case manager must prepare an appeals summary and provide this to the administrative hearing officer who hears the case. **(See section G. Appeal summary for the format for this summary.)**

7. Unfounded classification

- a) If the central office program staff do not uphold the indicated classification, program staff will draft the notification letters that the local case manager will prepare on county letterhead and mail to inform the alleged perpetrator and the employer or agency/organization of the classification change. The local case manager must change the classification information on TN KIDS, when possible, and the case record and notify the DA, Juvenile Court, and CPIT, as appropriate.
- b) Send all due process notification letters by certified mail, return receipt requested, and marked "personal and confidential" on the envelopes.

8. Correction of classification

If an Administrative Hearing Officer hears the case and the indicated classification is not upheld by the final order, the local case manager will be directed by central office CPS program staff to inform the appropriate parties. The local case manager must also change the classification in TN KIDS, when possible, and the case record and notify the DA, Juvenile Court, and CPIT, as appropriate.

D. Non-Emergency Due Process

1. Access to child

At the conclusion of the classification process, initiate due process when the perpetrator or person who failed to protect does not have current access to a child because of employment or volunteer status in an agency/organization. This includes individuals who were suspended during the investigation or temporarily do not have access to the child. The situation does not constitute an emergency unless the indicated perpetrator returns to a position having contact with the children.

2. Perpetrator notification

Upon determining that a perpetrator or person who failed to protect is indicated, notify central office CPS program staff and program staff will draft the notification letter that the local case manager will prepare on county letterhead and mail to

the perpetrator. The notification letter will inform the perpetrator of the results of the investigation and explains the right to an ex parte review of the case by the Commissioner or designee.

3. Ex Parte review

If the indicated perpetrator requests an ex parte review, send the case record and any other pertinent information to the central office Director of Child Protective Services. The CPS program staff will review the case within 30 days of receipt of the written request to determine if the investigation was properly classified as indicated.

4. Due process hearing

- a) If the ex parte review upholds the indicated finding, program staff will draft the notification letter that the local case manager will prepare, on county letterhead and mail, to inform the perpetrator of the right to an administrative hearing.
- b) Send all due process notification letters by certified mail, return receipt requested, and marked "personal and confidential" on the envelope.
- c) DCS must receive a written request for a hearing from the perpetrator within ten days. If the perpetrator submits a written request for a hearing, the perpetrator's letter must be date stamped with the date the written request was received in the county office.

5. Employer notification

When appropriate, in response to the employer's inquiry, central office CPS program staff will draft a letter to respond to the inquiry for a completion by the local case manager on county letterhead and mailing.

6. Unfounded classification

If the ex parte review does not uphold the indicated classification, program staff will draft the notification letters that the local case manager will prepare, on county letterhead and mail, to inform the alleged perpetrator and the employer or agency/organization of the classification change. The classification information must be changed in TN KIDS, by entering the changes in the case recordings and by notifying the DA, Juvenile Court and CPIT, as appropriate.

7. Appeals summary

If the alleged perpetrator requests an administrative hearing, the case manager must prepare an appeals summary according to the format described in section G. *Appeal Summary*, and send the appeals summary to the Administrative Hearing Officer who will hear the case.

8. Changing classification upon administrative review

Upon receipt of a Final Order following the administrative review, if the indicated classification is overturned, the classification must be changed to *unfounded* in TN KIDS, when possible, and in the case recordings and notify the DA, Juvenile Court and CPIT, as appropriate. When appropriate, in response to the Final Order, central office program staff must be contacted by the local case manager so that program staff can draft the employer notification letter of the classification change for completion and mailing by the local case manager.

E. Perpetrator's pending legal action**1. Notification**

Immediately notify the DCS regional legal counsel and the administrative hearing officer of any arrest, indictment, or other judicial or administrative proceeding involving the alleged perpetrator. The administrative hearing officer will then stay proceedings until court action is completed if the other legal action involves the same issue of abuse.

2. Due process reinstated

- a) After the legal action is completed, the alleged perpetrator may request that the due process proceedings be reinstated by writing to the county department within 30 days of the date that the tribunal issues a final order that does not find the person as a perpetrator of child abuse. If an appeals summary has not previously been submitted, notify the Director of Administrative Review by completing the appeal summary and submitting it to him/her.
- b) Ensure that the perpetrator understands that failure to request reinstatement within 30 days results in the disclosure of the investigative finding. At that time, DCS will advise any child welfare agency with whom the perpetrator may be working, their licensing authority, or any other organization/agency through which the perpetrator has access to a child that the tribunal found the perpetrator indicated of abusing a child and/or DCS has indicated the perpetrator for physical, severe or sexual abuse of a child.

F. Appeal summary purpose

The Appeal Summary provides all involved parties (DCS, Administrative Hearing Officer and perpetrator) with a summary report that details identifying information on:

1. The child victim(s),

2. Caretaker(s) and perpetrator(s);
3. The incident(s) investigated;
4. The evidence collected;
5. DCS correspondence sent to the perpetrator(s);
6. Judicial proceeding filed on the perpetrator and/or child victim; and
7. A listing of potential witnesses contributing to the classification decision-making process.

G. Appeal summary format**1. Section I – Identifying Information**

- a) Full name and address of the indicated perpetrator, county of residence, social security number and perpetrator's relationship to the victim(s).
- b) List any other county involved in the investigation and/or classification of the incident and the reason for involvement.
- c) Name and address of the child victim(s) of this indicated perpetrator and in the address include the name(s) of the child victim's caretaker(s).
- d) Date appeal summary prepared

2. Section II – Nature Of The Case

- a) Provide the date and substance of the referral that was investigated and classified as indicated. Also, include the date(s) of the alleged incident(s). Do not list the complainant's or referral source's name.
- b) List validation criteria, as found in State Rule 0250-7-9-.02, which was used to indicate the referral. If the Child Protective Investigative Team (CPIT) investigated, attach form CS-0760, *Child Protective Investigative Team Report*.
- c) Date referral classified as indicated.
- d) Summarize the events that led to the perpetrator's request for an administrative hearing.

3. Section III – History of Due Process

- a) Date and nature of notification letter(s) that have been

mailed to the perpetrator. Provide a copy of all notification letters mailed to the perpetrator with the perpetrator's request for an administrative hearing.

- b) In emergency situations, identify the agency director to whom the information has been released. Give the date and the reason. Also, include any action that the agency has taken as a result of receiving this information.
- c) Give the date of the Commissioner or designee's file review. Attach a copy of the file review results that the county office received.
- d) Explain any judicial proceedings that have been filed in relation to this perpetrator and/or child victim. Include the current status of the litigation. Attach any available petitions, warrants, or orders.

4. Section IV – Additional Pertinent Information

Provide additional pertinent information, as necessary.

5. Section V - Witnesses

List all case managers, team leaders, and CPIT members who made decisions regarding this case and note the discipline that each one represents and all individuals who conducted medical or psychological evaluations or were collaterals with corroborating evidence.

6. Section VI - Distribution

Distribute copies of the Appeal Summary as follows:

- a) Administrative Hearing Officer (original and one copy)
- b) Appellant and/or his/her representative
- c) DCS Regional Legal Counsel
- d) Team Coordinator
- e) Team Leader
- f) DCS Regional Administrator
- g) Child Protective Services Program Director

H. Releasing the finding**1. Perpetrator responsible for abuse**

When there is a final order naming a perpetrator or passive perpetrator in physical, severe and sexual abuse cases as responsible for child abuse, all departmental due process procedures are exhausted. Unless a stay has been granted, notify central office CPS program staff and program staff will draft the notification letters that the local case manager will prepare on county letterhead and mail to inform the employer or agency /organization of the final order classification decision.

2. Perpetrator not responsible for abuse

It is not necessary to close a CPS case in which a judicial or administrative finding does not uphold the classification that the perpetrator is responsible for child abuse. There may be CPS cases that may require provision of services in response to the child abuse and/or risk related issues in the family.

3. Final order

- a) Following the administrative hearing, the Director of Administrative Review will review the initial order before it becomes a final order.
- b) When the Director issues a final order, follow all directions provided. Do not release any information to the employer or agency/organization until the final order verifies that the individual is a perpetrator of abuse, that the central office CPS program staff have been contacted, and it has been determined that no stay has been issued by the Director of Administrative Review and no other appeals have been filed.
- c) Consult DCS regional counsel for assistance with any clarification of the issued Final Order directives. Inform the licensing agency of the findings in the final order.

Forms

CS-0561

Child Protective Investigative Team Report

Collateral Documents

*Rules Of The Tennessee Department Of Human Services Social Services Division,
Chapter 1240-7-9, Due Process Procedures For Release Of Child Abuse Records
(Attached)*

Standards

None

Glossary

<i>Term</i>	<i>Definition</i>
<i>Ex parte review :</i>	A judicial proceeding is said to be <i>ex parte</i> when it is taken for granted at the instance and for the benefit of one party only, and without notice to, or contested by, any person adversely interested.

**RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
SOCIAL SERVICES DIVISION**

**CHAPTER 1240-7-9
DUE PROCESS PROCEDURES
FOR RELEASE OF CHILD ABUSE RECORDS**

1240-7-9.01. SCOPE OF RULES

The rules in this chapter apply to individuals whom the Department of Human Services identifies or proposes to identify as a perpetrator or physical, severe, or sexual abuse, as defined in Parts 1, 4, or 6 of Chapter 1 of Title 37 of the Tennessee Code Annotated. These rules shall further apply only when such identification is released or proposed to be released to: (1) the individual's employer whether the individual is a paid employee or under contract; (2) the licensing authority of the employer or the individual; or (3) any other organization with which the individual is associated as a paid employee or contractor, or volunteer; whether such individual is providing instruction, care, supervision, or treatment (a) in a child welfare agency as defined in T.C.A. §71-3-501 *et seq.*; (b) in a public or private school for children; (c) in a residential or institutional child caring organization; (d) through self employment; or (e) in any other organization. Such release shall be for the purposes of protecting children from further abuse and for the purposes directly connected with the administration of T.C.A. §§37-1-101 *et seq.*; 37-1-401 *et seq.*; 37-1-601 *et seq.*; 71-3-530.

Authority: T.C.A. §§71-1-105, 37-1-612, 37-1-616 and 71-3-530.

Administrative History: Original rule filed September 13, 1988; effective October 28, 1988.

**1240-7-9-.02. CLASSIFICATION OF REPORTS OF CHILD ABUSE AS
“VALIDATED” – CRITERIA**

A report of child abuse by the alleged perpetrator may be classified as “validated” if there is substantial and material evidence, in light of the entire record, which indicated the individual committed physical, severe or child sexual abuse, as defined in T.C.A. §§37-1-102 or 37-1-602. Proof of one or more of the following factors, linking the abusive act(s) to the alleged perpetrator, shall constitute substantial and material evidence, except for the factors in paragraph (6), (7) and (8), which shall only be corroborative of other evidence:

- (1) Medical and/or psychological information from a licensed physician, medical center, or other treatment professional, that substantiates that child abuse occurred.
- (2) An admission by the perpetrator.
- (3) The statement of a credible witness or witnesses to the abusive act.
- (4) The child victim's statement that the abuse occurred. The following elements are typical of sexually abusive situations, and should be considered in assessing the weight to be given to the child's statement in cases where sexual abuse is alleged:
 - (a) History of Relationship.
 - 1. Multiple incidents occurring over a period of time. This situation is most common where the alleged perpetrator is a relative, friend, or caretaker of a victim.
 - 2. Progression of physical touching, from activities that appear acceptable at first, but become sexual in nature.
 - (a) Details of Abuse.
 - 1. Explicit knowledge of sexual activity. The victim relates explicit details of the sexual experience. This is especially relevant where the details are beyond the knowledge typical of a child of the victim's age.
 - 2. Richness of details, such as location and/or time, even if a specific date is not given, or other details of the environment. For a preschool-age child, such details are not expected. As a child's development age increases, more detail is expected.
 - 3. Consistency. If the child is interviewed more than once, the responses and statements are generally consistent from one interview to the next. Parts of the story are corroborated by other circumstances and/or witnesses.
 - (a) Secrecy. The child indicates that he/she was instructed, asked, and/or threatened to keep the abuse secret.
 - (b) Coercion. Elements of coercion, persuasion, or threats to get the child to engage in the activity.

(5) Physiological indicators or signs of abuse, including, but not limited to, cuts bruises, burns or broken bones.

(6) Physical evidence which tends to substantiate the allegations, including, but not limited to, the following:

- (a) presence of child pornography or erotica such as child oriented books, magazine articles;
- (b) video equipment, cameras, photos, negatives, slides, movies, video cassettes, drawings or children;
- (c) personal letters and other correspondence from pedophiles;
- (d) diaries indicating sexual abuse occurred;
- (e) sexual aides (as describes by child);
- (f) sexual "souvenirs" (e.g. panties or other similar items belonging to the victim or other children) ;
- (g) lists of other victims, other offenders;
- (h) weapons (as described by child);
- (i) bed, clothing, sheets, etc. which contain bodily fluids, pubic hairs, and other physical evidence.

(7) Behavioral indicators. Child abuse often leads to behavioral manifestations in the child victim. The existence of some or all of the following behavioral patterns may be indicative of child abuse in a given case, and corroborate other evidence of abuse as provided in these rules.

- (a) Indicators of Children (Preadolescent).
 - 1. Stylized behavior; excessive seductiveness
 - 2. Unusual interest in sex organs or self or others (either children or adults.
 - 3. Fearful or suspicious of adults
 - 4. Tugging at clothing in genital area
 - 5. Tired, lethargic, sleepy appearance

6. Regressive behaviors; such as whining, negative changes in toilet habits
 7. Persistent fears or overwhelming nightmares
 8. Blaming or dislike of self
 9. Change in school grades
 10. Public or excessive masturbation
 11. Developmental delays
 12. Child is perceived and/or
 13. Behavioral extremes (e.g.: extremely aggressive or passive, persistent crying)
 14. Child assumes parental role (i.e., care taking of one or both parents, and/or siblings, beyond normal "role-playing" for child's age)
- (a) Indicators in Adolescents
1. Stylized behavior: excessive provocativeness beyond norm for the child's age
 2. Shy, withdrawn, overburdened appearance
 3. Change in school grades
 4. Running away
 5. Self-destructive behavior
 6. Substance abuse that is more than experimental
 7. Unwillingness to participate in group activities
 8. Stealing; shoplifting
 9. Pregnancy wishes
 10. Prostitution
 11. Fear or distrust of men, adults

12. Statements about being “bad” or undesirable
 13. Wary of/avoidance of physical contact
 14. Excessive longing for affection
 15. Child assumes parental role, or role as spouse of parent (i.e., care taking of one or both parents and/or siblings, beyond normal role-playing for child’s age)
- (8) Circumstantial evidence linking the alleged perpetrator to the abusive act(s) (e.g., child was in care of the alleged perpetrator at the time the abuse occurred and no other reasonable explanation of the cause of the abuse exists in the record).

Authority: T.C.A. §§71-1-105, 37-1-612 and 37-1-616. **Administrative History:** Original rule filed September 13, 1988, effective October 28, 1988.

**1240-7-9-.03. WHEN RIGHTS UNDER THIS CHAPTER ATTACH-
“TRIGGERING EVENTS”**

- (1) The rights to review and hearing set forth herein are triggered by the classification of an investigation report of physical, or severe, or child sexual abuse as a “validated” case together with the release, under emergency procedures under rule 1240-7-3.09, *or the intended release* as otherwise permitted under these rules in non emergency situations, *of the name of any individual providing instruction, care, supervision, or treatment of children, identifying the individual as a “validated” perpetrator* of physical or severe child abuse, or child sexual abuse, to:
- (1) the individual’s employer whether the individual is a paid employee or under contract; (2) the licensing authority of the employer or the individual; or (3) other organization with which the individual is providing such instruction, care supervision, or treatment (a) in a child welfare agency as defined in T.C.A. §§71-3-501 *et seq.*; (b) in a public or private school for children; (c) in a residential or institutional child caring organization; (d) through self-employment; or (e) in any other organization.
- (2) If no release procedure is begun under paragraph (1) above within two (2) years of the classification of the report and the alleged perpetrator as “validated,” then no such release shall be undertaken as to the allegation. This shall not, however, require expunction of this information from the internal records of the Department.

- (3) The rights to review and hearing are not triggered by release of information concerning the alleged perpetrator from Department records to:
- (a) any state(s) or federal law enforcement agency(ies) investigation a report of known or suspected child abuse or neglect or any crimes involving children;
 - (b) any state(s) district attorney or United States attorney(s) or their authorized assistants, of the judicial districts or agencies involved in investigating or prosecuting crimes against children;
 - (c) any state(s) or federal grand jury by subpoena or presentation of evidence by the district attorney or United States attorney to such grand jury;
 - (d) treatment of professionals treating the child, his or her family, or the perpetrator;
 - (e) in-house requests by employees of the Department of Human Services for purposes consistent with enforcement of the child abuse and neglect or child welfare licensing laws of the state of Tennessee including disclosure to other individuals for purposes directly connected with the administration of Title 37, Chapter 1, Parts 4 and 6 or Title 71, Chapter 3, Part 5, of the Tennessee Code Annotated, other than disclosure to the employers, licensing authority other than the Department of Human Services, or other organizations, where validated perpetrators of child abuse are employed, licensed, or associated, providing instruction, care, supervision, or treatment for children;
 - (f) any state(s) or federal social service or other agencies investigating cases of child abuse or neglect or providing treatment or care for alleged or known victims of child abuse or neglect;
 - (g) any court official, probation counselor, parole officer, designated employee of any Department of Correction or similarly situated individual charged with the responsibility of preparing information to be presented in any administrative or judicial proceeding concerning any individual charged with or convicted of any offense involving child abuse, child sexual abuse, or neglect;
 - (h) to the court, administrative board or hearing, the officials or employees thereof in the performance of their duties, the parties, or their legal representatives in any judicial or administrative proceeding or before any board or hearing officer for the purpose of protecting a child or children from physical or severe child

abuse, neglect, or child sexual abuse, except in such situation when such court, administrative hearing, board, or hearing officer, other

than the Department of Human Services, is adjudicating a case affecting the perpetrator's ability to remain or become employed or licensed, in which situation such information shall be released only by order of the court or hearing officer.

Authority: T.C.A. §§71-1-105, 37-1-409, 37-1-612 and 37-1-616. Administrative History: Original rule filed September 13, 1988; effective October 28, 1988.

1240-7-9-.04. RIGHT TO NOTICE AND OPPORTUNITY FOR FILE REVIEW

- (1) Except as otherwise provided in this chapter, any individual who is identified or is proposed to be identified as set forth in 1240-7-9-.01 as a perpetrator of child abuse in a "validated" report of child abuse investigated by the Department of Human Services, has the right to request and receive an informal "file review" of the case by the commissioner or his/her designee to determine whether, under the standards provided in 1240-7-9-.02, the report is properly classified as "validated."
- (2) Except as provided by rule 1240-7-9-.09, the Department will send written notice containing the information specified in paragraph (3) of this rule to the individual at his/her last known address within 10 days of the applicable "triggering event" specified in 1240-7-9.09, during this 10 day period specified in paragraph (3)(b) of this rule or until expiration of the time specified in 1240-7-9-.07(2), the Department will not disclose to the individual's employer or the organization in which the individual provides instruction, care, supervision, or treatment for children, or licensing authority of the employer or individual the fact that the individual is identified as a perpetrator of child abuse in a validated report as determined by the Department, but may disclose to those entities that fact that an investigation of the individual is occurring or has occurred.
- (3) The notice referred to in paragraph (2) must contain the following information:
 - (a) That the individual is identified as a the perpetrator of child abuse in a validated case of child abuse as determined by the Department and that the individual has the right to an informal ex parte review of the case by the commissioner or his/her designee.
 - (b) That he/she must contact the local Department of Human Services office, in writing, within ten (10) days of the date of the notice, in order to request the file review. A request for a hearing prior to completion of the file review will not be deemed a proper request for a hearing.

- (c) That if the individual fails to request a review within ten (10) days of the date of the notice, he/she will be identified to his/her employer or licensing authority, or other organization in which the individual provides instruction, care, supervision or treatment of children, as the perpetrator of child abuse in a “validated” case.
- (1) If the individual requests a file review within the required time, the commissioner or his/her designee will conduct the review specified in paragraph (1) of this rule, and make a determination of whether the report is properly classified as “validated” within thirty (30) days of the date the individual requests the review, unless the proceedings are stayed pursuant to 1240-7-9-.06.
- (2) If the individual fails to request a review within the required time frame, the individual will be deemed to have forever waived his/her right to a review or a hearing as provided in 1240-7-9-.05 in regard to the report. The validated report will then be available for dissemination to his/her employer, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment of children, for the purpose of protecting children from abuse. Provided, however, that the individual may be granted a review notwithstanding his/her failure to make a request within the time required by paragraph (3)(b), is said individual shows good cause for his/her failure to receive the notice referred to in paragraph (2), severe illness, or some other disabling condition which substantially prevented the individual from requesting a review within the required time limit.
- (3) If the review results in a decision that the standards in 1240-7-9-.02 are not met, and that the report is, therefore, not properly classified as “validated” the Department will not release information from its records identifying the individual, as a perpetrator of child abuse to the individual’s employer or licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment for children. Nothing in these rules shall be construed to require the expunction of internal case records maintained by the Department.

Authority: T.C.A. §§71-1-105, 37-1-408, 37-1-612 and 37-1-616. Administrative History: Original rule filed September 13, 1988; effective October 28, 1988.

1240-7-9-.05. RIGHT TO NOTICE AND OPPORTUNITY FOR HEARING

- (1) Except as otherwise provided in this chapter, any individual who is identified or is proposed to be identified as set forth in 1240-7-9-.01 as a perpetrator of child abuse in a “validated” report investigated by the Department and who has requested and/or received a “file review” pursuant to 1240-7-9-.04 or 1240-7-9-.09 which review has resulted in the classification of “validated” report being upheld by the Department, has the right to request and receive an administrative hearing officer of the

Administrative Procedures Division of the Department. A request for a hearing prior to a timely request and receipt of a file review pursuant to 1240-7-9-.04 or 1240-7-9-.09 will not be deemed a proper request for a hearing.

- (2) The Department will send written notice containing the information specified in paragraph (3) to the individual at his/her last known address within ten (10) days of the date of the file review under 1240-7-9-.09 or 1240-7-9-.09 results in a decision that the report is properly classified as "validated." Except as otherwise provided in rule 1240-7-9-.09, during this period, and until expiration of the 10-day period specified in paragraph (3)(b) of this rule or until expiration of the time specified in 1240-7-9-.07(2), the Department will not disclose the fact that the individual has been classified by the Department as a perpetrator of child abuse in a "validated" report, but shall only release the fact that a hearing concerning the individual pursuant to the child abuse laws of this state is pending.
- (3) The notice referred to in paragraph (2) shall contain the following information:
 - (a) That the individual is identified as the perpetrator of child abuse in a "validated" report investigated by the Department of Human Services and the commissioner's review has upheld the classification as "validated."
 - (b) That the individual has a right to a hearing, and that he/she must contact the local office of the Department of Human Services, in writing, within ten (10) days of the date of the notice, in order to request a hearing.
 - (c) That if the individual fails to request a hearing within ten (10) days of the date of the notice, he/she will be identified to his/her employer or licensing authority, or other organization in which the individual provides instruction, care, supervision or treatment of children, as a perpetrator of child abuse.
- (2) If the individual requests a hearing within the required time frame, the Department will schedule a hearing and give the individual adequate notice of the hearing, as provided in chapter 1240-5-4.
 - (a) The hearing will be held, and an initial order entered therein, within ninety (90) days of the date of the notice required in paragraph (2), or in rule 1240-7-9-.09(3), if applicable, unless:

1. The time limit is extended or waived by agreement of the parties, or for good cause shown; or
 2. The proceedings are stayed, pursuant to 1240-7-9-.06.
- (2) If the individual fails to request a hearing within the required time frame, the individual will be deemed to have forever waived his/her right to a hearing in regard to that report. The report will then be available for dissemination to his/her employer, or licensing authority, or other organization in which the individual provides instruction, care, supervision or treatment for children, for the purpose of protecting children from abuse. Provided, however, that the individual may be granted a hearing notwithstanding his/her failure to make a request within the time required by paragraph (3)(b), or by rule 1240-7-9-.09, if applicable if said individual shows good cause for his/her failure to do so. For purpose of this rule, "good cause" is limited to failure to receive the noticed referred to in paragraph (2), severe illness, or some other disabling condition, which substantially prevented the individual from requesting a hearing within the required time limit.

Authority: T.C.A. §§71-1-105, 37-1-409, 37-1-612 and 37-1-616. Administrative History: Original rule filed September 13, 1988; effective October 28, 1988.

1240-7-9-.06. STAY OF ADMINISTRATIVE PROCEEDINGS

- (1) If the individual has been arrested or indicated on criminal charges or is a civil or other administrative proceedings alleging child abuse by the individual, who is the subject of proceedings under these rules, which charge or proceedings are derived from the same allegations resulting in a "validated" classification under these rules, have been initiated in any court or other administrative proceedings, the following provisions apply:
- (a) If the arrest, indictment, and/or initiation of other judicial or other administrative proceedings occurs any time prior to the entry of the final order, all administrative proceedings under these rules will be immediately stayed pending final resolution (including appeals) of the judicial administrative proceedings. Provided, however, that the notice specified in 1240-7-9-.04(2), .05(2), or 1240-7-.09(3), as appropriate, will, notwithstanding the provisions of this subparagraph, be sent to the individual and the individual will be required to comply with the provisions of 1240-7-9-.04(3)(b), .05(3)(b), or 1240-7-9-.09(3)(a)2, as appropriate, in order to preserve any future right to a review or hearing. Except as otherwise provided in 1240-7-9-.09(3)(b), during the stay, the Department will release no information about the individual to the report in question, except that judicial or administrative proceedings involving allegations of child abuse by the individual are pending before a specified court or administrative proceeding.
 - (b) If a criminal prosecution results in a conviction or guilty plea for any offense listed in T.C.A. §§37-1-602(a)(2), or for any act which would constitute child

abuse or severe child abuse as defined in T.C.A. §37-1-102(10) and (19), or if the individual is found guilty or pleads guilty to any lesser offense derived from the offenses or acts alleged under T.C.A. §37-1-602(a)(2) or T.C.A. §37-1-102(10) and (19), or if any court or administrative proceeding results in a judicial or administrative adjudication that the individual has committed, or has knowingly allowed to be committed, any act which would constitute physical abuse or severe child abuse, as defined in T.C.A. §37-1-102(10) and (19) or any act which constitutes child sexual abuse as defined in T.C.A. §37-1-602(2), then such conviction and/or adjudication will be conclusive evidence that the individual is the perpetrator classified in the "validated" report and the individual will have no right to a review as provided for in 1240-7-9-.04 or a hearing provided for in 1240-7-9-.05 in regard to that particular report and information on the perpetrator will be released as otherwise permitted under these rules.

- (c) If the criminal and/or civil or administrative proceeding does not result in a conviction and or finding as specified in (b) above, including pretrial diversion, this fact will be admissible in the administrative hearing, but will in no way be conclusive on the issue of whether the report is properly classified as "validated."
- (2) If administrative proceedings have been stayed pursuant to this rule, they will be reinstituted at this point at which they were stayed if the alleged perpetrator requests such in writing to the local office of the Department of Human Services within thirty (30) days of entry of a final order by a court or other administrative body favorably disposition of the issue of child abuse involving the alleged perpetrator or of any disposition other than guilty by a court in a criminal proceeding. If the alleged perpetrator fails to make such a written request within the required time period he/she will be deemed to have forever waived his/her rights to a hearing in regard to that report. The validated report and information regarding the perpetrator will be released as otherwise permitted under these rules.
- (3) Unless the individual has waived his/her rights to a review or hearing by failing to request same under paragraph (1)(a), if administrative proceedings have been stayed, the Department will send the individual written notice advising him/her of the following:
 - (a) That administrative proceedings have been stayed pending the final outcome of judicial or other administrative proceedings concerning allegations of child abuse involving the individual.
 - (b) That the administrative proceedings under these rules will be reinstituted at the point they were stayed only if the individual requests such in writing to the local office of the Department which issued the original notice within thirty (30) days of the entry of a final order by the court or

administrative tribunal or verdict by a criminal court [unless the order or verdict is as specified in paragraph (1)(b) above].

- (c) If the individual fails to make such a written request within the required time period, he/she will be deemed to have forever waived his/her rights to a hearing in regard to the report.

Authority: T.C.A. §§71-1-105, 37-1-409, 37-1-612 and 37-1-616. Administrative History: Original rule filed September 13, 1988; effective October 28, 1988.

1240-7-9-.07. CONDUCT OF THE HEARING

- (1) The hearing provided for in 1240-7-9-.05 will be conducted in accordance with the provisions of the Uniform Administrative Procedures Act and the rules of the Administrative Procedures Division of the Department of Human Services.
- (2) Except as otherwise provided in rule 1240-7-9-.09, the Department will not release the fact that the individual has been named as a perpetrator of child abuse in a “validated” report until the individual has exhausted all of his/her appeal rights under this chapter, up to, but not including judicial review unless a stay is ordered pursuant to T.C.A. §4-5-322(e), or until said rights are waived. In the interim, the Department shall release the fact that an investigation or hearing concerning the individual pursuant to the child abuse laws of the state is pending.
- (3) If the final order of the Department, or a court of competent jurisdiction in the event of judicial review, is that the report is not properly classified as “validated,” according to the standards in 1240-7-9-.02, the Department will not identify the individual to the individual’s employer or licensing authority or other organization in which the individual provides instruction, care, supervision or treatment of children, as a perpetrator of child abuse. The Department, if it has indicated to the entity that its employee, or licensee or other person providing instruction, care, supervision or treatment for children under investigation was the subject of a “validated” report, will notify the entity of the fact that the report was not properly classified as “validated.” Nothing in this rule shall be construed to require the expunction of any information from internal case records maintained by the Department.

Authority: T.C.A. §§71-1-105, 37-1-409 and 37-1-616. Administrative History: Original rule filed September 13, 1988; effective October 28, 1988.

1240-7-9-.08 EVIDENCE – STANDARD OF PROOF

- (1) Admissibility of evidence in hearings pursuant to 1240-7-9-.05 is governed by the provisions of T.C.A. §4-5-313. Provided, however, that “evidence admissible in court” shall, for purposes of hearings pursuant to this chapter, refer also to evidence admissible in any juvenile court of this state, pursuant to the Tennessee rules of Juvenile Procedure. Provided further that the evidentiary provisions of Title 4, Chapter 7, Part 1 of the Tennessee Code Annotated and T.C.A. §§37-1-401 *et seq.* and 37-1-160 *et seq.*, including the use of videotape testimony, shall be applicable to such hearings.
- (2) In hearings pursuant to 1240-7-9-.05, the sole issue for the hearing officer to determine is whether the standards for classifying the report as “validated,” as provided in 1240-7-9-.02, have been met in that particular case. In making this determination, the hearing officer shall consider whatever relevant and admissible proof the individual offers that the report is not properly classified as validated and shall further consider any competent and admissible proof concerning the dynamics of child abuse relevant to whether the classification is proper.

Authority: T.C.A. §§71-1-105, 37-1-409, 37-1-612, 37-1-616, 37-1-616, 4-5-313 and Tennessee rules of Juvenile Procedures. Administrative History: Original rule filed September 13, 1988, effective October 28, 1988.

1240-7-9-.09. ALLEGED PERPETRATORS WITH CURRENT ACCESS**TO CHILDREN – EMERGENCY NOTIFICATION**

- (1) The provision of this rule apply to individuals identified as a perpetrator of child abuse in a “validated” report, who provide instruction, care, supervision, or treatment for children and who have access to children by virtue of his/her paid or contracted employment or volunteer work in a child welfare agency, as defined in T.C.A. §§71-3-501 *et seq.*; or his/her employment by contract or otherwise in public or private schools, residential or institutional child caring organizations; or in any other situation where the perpetrator is self-employed or is employed in an organization in any manner by others, or is a volunteer in any other organization providing instruction, care, supervision, or treatment for children.
- (2) As soon as reasonably possible after classification of a report under the circumstances specified in paragraph (1), the Department will conduct an ex parte file review of the report, as provided in 1240-7-9-.04.
- (a) In addition to reaching a determination as to whether the report is properly classified as “validated,” the commissioner or his/her designee shall make a determination whether the report and investigation reveal an immediate threat to the health, safety, or welfare of a child or children exists.
 - (b) If such threat is found to exist, the Department will follow the procedures specified in paragraphs (3), (4), and (5) of this rule. If no such immediate

threat is found to exist, the Department will follow the procedure specified in rule 1240-7-9-.05.

- (2) As soon as reasonably possible after a determination has been made that an emergency situation exists, in that there is an immediate threat to the health, safety or welfare to a child or children as specified in paragraph (2)(a) above, the Department will, notwithstanding the provisions of 1240-7-9-.06, send written notice to both the alleged perpetrator and the child welfare agency, or other employer, person, licensing authority other than the Department of Human Services, or other organization with authority or supervision over the alleged perpetrator in the circumstances of paragraph (1) above, whether subject to licensure by the Department or not.

- (a) The notice to the alleged perpetrator will contain the following information:

1. That the individual is identified as the perpetrator of child abuse in a "validated" report of child abuse and that the commissioner or designee has upheld the classification as "validated."
2. That the individual has a right to a hearing, and that he/she must contact the local Department of Human Services office, in writing, within ten (10) days of the date and the notice, in order to request a hearing.
3. That if the individual fails to request a hearing within ten (10) days of the date of the notice, he/she will remain identified by the Department of Human Services to his/her employer, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment of children as a perpetrator of child abuse.
4. A statement that the employer, agency, licensing authority, or other supervising organization over the individual or organization with which the individual is associated in providing instruction, care, supervision, or treatment has been notified of the situation, and a copy of the notice to the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment will be attached.

- (a) The notice to the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment shall contain the following:

1. That the named individual has been reported as perpetrator of child abuse, and the Department has determined that the report is "validated," pursuant to state rule 1240-7-9-.02.

2. That the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment for children must immediately take action to assure that the individual has no access to or contact with any child in their care until further notice by the Department.
3. That if the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment for children fails to take such action, the Department will take action to suspend, revoke, or deny the agency's license if it is licensed by the Department, or the Department will take such other action as may be necessary to protect the children, pursuant to T.C.A. §71-3-530.
4. That the individual has been notified of his/her right to a hearing on the allegations, and that employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment of children will be notified of the final decision in regard to the allegations.

(4) If the individual requests a hearing within the required time period, the provisions of 1240-7-9-.05(4) apply. If the individual fails to request a hearing within the required time period, the provisions of 1240-7-9-.05(5) apply.

(5) Following final resolution of the case, whether by administrative hearing, court order, or waiver by the alleged perpetrator, the Department will notify the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment of children with which the individual is associated in writing of the decision.

If the classification of the report as "validated" has been upheld, the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment of children will be required to continue to assure nonaccess as provided in paragraph (3)(b)2, and the notice shall so state.

- (a) If the classification of the report as "validated" is determined to have been incorrect, the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment of children will not be required to assure nonaccess as provided in paragraph (3)(b)2, and the notice shall so state.

(6) Except as provided in paragraph (3), the provisions of rule 1240-7-9-.06 are also applicable to proceedings under this rule.

Authority: T.C.A. §§71-1-105, 37-1-409, 37-1-409, 37-1-612, 37-1-616 and 71-3-530.

Administrative History: Original rule filed September 13, 1988; effective October 28, 1988.

1240-7-9-.10. PROHIBITED RELEASES

(1) The Department of Human Services shall not release information from its records to identify to employers, agencies, licensing authorities other than the Department of Human Services, or other organizations, for purposes of preemployment screening or licensing, the individual as a perpetrator of child abuse.

(2) The Department of Human Services shall not release information from its records to identify, for purposes of responding to a request from an employer, agency, licensing authority, or other supervising organization of an individual or other organization in which the individual provides instruction, care, supervision of, or treatment of children, for purposes of routine or random screening of current employees or associates of these organizations as to their status as perpetrators of child abuse. This shall not be construed to prevent the release of information identifying an individual as a perpetrator of child abuse, or otherwise permitted under these rules following a classification by the Department of Human Services of a report of child abuse as “validated” and following exhaustion or waiver of review, hearing remedies, or under emergency release procedures set forth in rule 1240-7-9-.09.

Authority: T.C.A. §§71-1-105, 37-1-409, 37-1-612 and 37-1-616. Administrative History: Original rule filed September 13, 1988; effective October 28, 1988.